

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into the Service
Quality Standards for All Telecommunications
Carriers and Revisions to General Order 133-B.

Rulemaking 02-12-004
(Filed December 5, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
NOTICE OF INTENT TO SEEK COMPENSATION**

As required by Pub. Util. Code § 1804(b)(1), this ruling finds that the National Consumer Law Center (NCLC) is a customer eligible for an award of compensation, has met the significant financial hardship test, and is eligible for compensation in this proceeding.

Timeliness

Section 1804(a)(1) provides that a Notice of Intent (NOI) must be filed and served within 30 days after the prehearing conference (PHC), unless no PHC is held or the proceeding is expected to be completed in less than 30 days. No PHC has been held in this case, and no deadline has been established for filing NOIs. NCLC timely filed its NOI on February 11, 2003.

Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a "customer" and that participation without compensation would pose a significant financial hardship.

Customer Status

Section 1802(b) defines the term "customer" as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. . .

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. (See D.98-04-059, *mimeo.*, at pp. 83 and 88.)

NCLC seeks to participate as a formally organized group authorized to represent the interests of residential customers, the third category of customer. NCLC states it works solely on behalf of low-income residential consumers of various utility services, including telecommunications, electricity, and natural gas. NCLC is not a membership organization. NCLC does not now represent nor has it in the past represented non-residential consumer interests. NCLC's Articles of Organization, attached to its NOI, state the purposes of its organization is to assist poor, distressed and underprivileged consumers obtain their rights and needed reformation of the law and to strengthen their bargaining

power. NCLC is a customer as that term is defined in §1802(b) and is an organization authorized by its articles of organization to represent the interests of residential customers.

Significant Financial Hardship

NCLC states it would suffer a significant financial hardship if it were to participate in this proceeding without intervenor funding. Section 1802(g) defines “significant financial hardship” as:

“either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed. To be eligible for compensation as a customer of the third type, the financial hardship test requires the economic interest of NCLC’s individual members be small in comparison to the costs of effective participation. This rulemaking indirectly affects utility ratepayers’ economic interests. Here the Commission is reviewing service quality measures for services offered by different categories of carriers and considering standards, service quality assurance mechanisms, and revisions to General Order 133-B. Although service quality rules have economic implications, those effects for individuals of the type NCLC represents are small in comparison to the costs of participation. NCLC meets the significant financial hardship test.

Nature and Extent of Planned Participation; Estimate of Compensation

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

Planned Participation

The Commission has stated that the information provided on planned participation should provide the basis for a critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, *mimeo.*, at pp. 27-28, 31-33.) Parties are encouraged to coordinate to ensure that efforts are not duplicated.

The NOI states NCLC intends to participate by filing written comments and responses to comments of others, by filing briefs, and by participating in any hearings that may be scheduled. NCLC also reserves its right to participate by filing expert testimony or by using any other permitted procedural routes. NCLC intends to address a broad range of issues, including but not limited to the number and types of service quality measures that should be adopted, the data sources that should be used to establish performance benchmarks, the frequency and content of company reports on service quality, the relative weighting of various service quality measures, and the design and implementation of any penalties. NCLC states it intends to file comments and other pleadings jointly with other active consumer groups.

Participation in Commission proceedings by parties representing the full range of affected interests is important and ensures a fully developed record. NCLC may represent customer interests that will be underrepresented if NCLC is unable to participate effectively.

Estimate of Compensation

Pub. Util. Code § 1804(a)(2)(A)(ii) requires that the NOI include an itemized estimate of compensation the intervenor expects to request. NCLC estimates that the costs of its staff attorney(s) and all other reasonable costs will be approximately \$35,000. NCLC attaches to its NOI an itemized estimate of its expenses as follows:

Representative	Estimated Hours	Hourly Rate	Estimated Cost
Staff Attorney	100	\$325	\$32,500
Estimated expenses			\$2,500
TOTAL			\$35,500

NCLC states the requested hourly rate is a reasonable market rate based on staff attorney Harak's years of experience as an attorney who has focused on utility and regulatory matters throughout his career. NCLC's itemization at this time fulfills the requirements of § 1804(a)(2)(A)(ii). NCLC must address the reasonableness of the requested rates in the context of the Commission's market rates in its ultimate Request for Compensation. This ruling does not ensure compensation.

NCLC is cautioned that it should carefully document the number of hours and hourly fees for counsel and carefully allocate such expenses to specific issues pursued in this proceeding. NCLC should also review Commission orders and, in preparing its compensation request, take into account the Commission's

practices for reducing hourly rates and hours claimed, e.g., for travel time and time spent on the compensation request itself.

No party has indicated opposition to NCLC's NOI. After consulting with the Assigned Commissioner, I find that NCLC should be eligible for an award under the intervenor compensation program.

IT IS RULED that:

1. The National Consumer Law Center (NCLC) has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible for compensation in this proceeding. NCLC is a customer as that term is defined in § 1802(b) and is authorized by its articles of organization to represent the interests of residential ratepayers.
2. NCLC has fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.
3. A finding of eligibility in no way assures compensation.
4. Parties requesting compensation shall make every effort to reduce duplication of contribution.

Dated June 27, 2003, at San Francisco, California.

/s/ JANICE GRAU

Janice Grau
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Seek Compensation on all parties of record in this proceeding or their attorneys of record.

Dated June 27, 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN

Helen Friedman

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.